

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

1155 CONNECTICUT AVENUE, N.W. • SUITE 1200 • WASHINGTON, D.C. 20036 • TELEPHONE (202) 659-5800 • FACSIMILE (202) 659-1027

HAL R. HORTON (1944 - 1998)

YULIYA B. ANDRESYUK†  
RONALD G. BIRCH\*\*  
WILLIAM H. BITTNER  
KATHRYN A. BLACK  
MARK W. BRENNAN<sup>∞</sup>  
SUZANNE CHEROT  
JON M. DEVORE\*\*  
KATHLEEN TOBIN ERB  
MARK E. FINEMAN, P.E.  
GREGORY S. FISHER

DOUGLAS S. FULLER\*  
MAX D. GARNER  
DAVID KARL GROSS  
TINA M. GROVIER  
PATRICIA M. HARDINA  
WILLIAM P. HORN\*  
STEPHEN H. HUTCHINGS  
SCOTT M. KENDALL  
DANIEL C. KENT

THOMAS F. KLINKNER  
HARVEY A. LEVIN††  
STANLEY T. LEWIS  
JAMES H. LISTER\*†  
GREGORY A. MILLER  
JENNIFER L. OWENS, Ph.D.  
MICHAEL J. PARISE  
TIMOTHY J. PETUMENOS  
ELISABETH H. ROSS\*\*

OF COUNSEL:  
JENNIFER C. ALEXANDER  
SHELLEY D. EBENAL  
KENNETH E. VASSAR

1127 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501-3399  
(907) 276-1550  
FACSIMILE (907) 276-3680

\* D.C. BAR  
\*\* D.C. AND ALASKA BAR  
∞ FLORIDA BAR  
† MARYLAND BAR  
† NEW YORK BAR  
‡ VIRGINIA BAR  
ALL OTHERS ALASKA BAR

Direct Dial: 202-862-8350

Email: [eross@dc.bhb.com](mailto:eross@dc.bhb.com)

September 28, 2006

REDACTED – FOR PUBLIC INSPECTION

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RE: *Applications for Assignment of Licenses from Denali PSC, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114*

Dear Ms. Dortch:

ACS Wireless, Inc. ("ACSW") submits these comments concerning new information that General Communication, Inc. ("GCI") produced on September 15, 2006, in response to the Commission's June 9, 2006 General Information Request: a newly "discovered" long-term Letter of Intent ("LOI") between GCI and Dobson Cellular Systems, Inc. ("Dobson").<sup>1</sup> The LOI carries through GCI/Dobson's intent in the Distribution Agreement to negotiate further enhancements to their business relationship, and develop new products and services necessary to compete effectively in the evolving wireless market.<sup>2</sup>

<sup>1</sup> See Letter of Intent Between Dobson Cellular Systems, Inc., and General Communication, Inc. (Jul. 24, 2004) ("Letter of Intent" or "LOI"), attachment to Letter from Carl W. Northrop, Counsel for GCI, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-114 (Sept. 15, 2006) ("LOI Cover Letter").

<sup>2</sup> See Agreement Between GCI Communication Corp and Dobson Cellular Systems, Inc., Art. I, §§ 1.8(a)(ii), at 13-14, 1.10(a)(v), at 16 (July 26, 2004) ("Distribution Agreement").

In the LOI, GCI and Dobson agree to negotiate plans to develop  
that will not only expand GCI's business relationships with key  
but will also lock in

The LOI confirms that GCI is

Additionally, the

LOI reveals that GCI has agreed to negotiate a

While GCI's counsel tries hard to minimize the LOI's significance, the LOI confirms that GCI is collaborating closely with Dobson to enhance and expand their wireless subscriber base, and provide joint service, through development of

. Where advantageous, GCI plans

to gain market share. GCI has

to finalize these cooperative agreements and develop other  
cooperative strategies.

At the same time that GCI disclaims any competitive alignment with Dobson, GCI's webpage proclaims the opposite. There, GCI states: "**GCI Cellular. Alaska's Largest and Most Advanced Digital Network.**"<sup>3</sup> While this claim is untrue, it confirms that GCI holds out Dobson's facilities as its very own wireless network. GCI does not own any mobile wireless facilities. Instead, GCI has contributed its spectrum,

and other inputs to the venture, and relies on Dobson's facilities to provide service.

Based on the Distribution Agreement and LOI, it is absurd to characterize the GCI/Dobson collaboration as a standard reseller arrangement. Consequently, the Commission should take GCI's strategic alignment with the largest wireless carrier in Alaska into account when analyzing the competitive effects of the Transaction. GCI should also formally agree not to undertake any of the LOI projects with Dobson in the future, since it concedes that these projects would create a competitive alignment with Dobson. GCI has implied that discussions are over, so it should formalize the end of negotiations. Further, GCI's extremely late production of a responsive, material document underscores the need for issuing a broader document production request to GCI and DigiTel to ensure all responsive documents are included in the record.

---

<sup>3</sup> "GCI Cellular. Alaska's Largest & Most Advanced Digital Network." 2006.  
<<http://www.gci.com/forhome/cellular/cellserv.htm>> (viewed Sept. 27, 2006).

*The LOI Confirms that the GCI/Dobson Collaboration Far Exceeds a Normal Reseller Arrangement*

The LOI exposes additional cooperative ventures – including – that confirm that the GCI/Dobson collaboration cannot in any way be considered a mere reseller arrangement. In its Supplemental Comments, ACSW identified numerous provisions in the Distribution Agreement showing that GCI/Dobson are strategically aligned in the Alaska marketplace and that the alignment increases the likelihood of anticompetitive harm from the transaction. Now that GCI has disclosed the LOI, the true nature of the GCI/Dobson relationship is indisputable.

In the LOI, GCI/Dobson plot out a

---

<sup>4</sup> LOI at 1.

<sup>5</sup> See *id.* at 2.

<sup>6</sup> See *id.* at 2-3.

. Further, the LOI reveals that GCI may rely on Dobson to

GCI/Dobson agree to negotiate to develop

While GCI claims Dobson has not yet developed this in fact, Dobson has already been granted ETC status in multiple areas<sup>9</sup> and is projected to receive \$25 million in 2006 in USF money to support its network.<sup>10</sup> Clearly, Dobson already has an and is maxing that out throughout its Territory. Also, GCI has told the RCA that it intends to expand into certain parts of the rural local service areas through wireless service.<sup>11</sup> GCI will need a to draw down USF support for these areas.

*The LOI Shows That*

The LOI also shows that

. Therefore, ACSW's concern that GCI will tie these services to restrict roaming competition as a result of the Transaction is hardly "imagined and totally speculative," as Applicants claim.<sup>12</sup> In the LOI, GCI and Dobson commit to

As it disclosed in its 10K, GCI provides *transport*

---

<sup>7</sup> See *id.* at 4.

<sup>8</sup> See LOI Cover Letter at 2.

<sup>9</sup> See *In the Matter of the Application of Dobson Cellular Systems, Inc. for Designation as a Carrier Eligible to Receive Federal Universal Service Support Under the Telecommunications Act of 1996*, Docket No. U-05-41, Order Affirming Electronic Ruling, Approving Application for Eligible Telecommunications Carrier Status and Requiring Filings, Order No. 1 at 1-2 (Reg. Comm. Alaska Jan. 25, 2006) (designating Dobson as eligible for USF support in the rural service areas of ACS of Fairbanks, ACS of Alaska-Greatland, ACS of Alaska-Juneau, ACS of Anchorage, ACS of The Northland/Glacier State, Alaska Telephone Company, Copper Valley Telephone Cooperative and MTA).

<sup>10</sup> Universal Service Administrative Company. "High Cost Support Projected by State by Study Area. Fourth Quarter 2006," Appendix HC01, 4Q2006, at 1 (Aug. 2, 2006) (retrieved Sept. 26, 2006, from <http://www.universalservice.org/about/governance/fcc-filings/2006/quarter1/default.aspx>).

<sup>11</sup> See, e.g., GCI's Responses to Order Requiring Filings, Exhibits A1 and A2 (maps showing residences serviceable by wireless service) filed in *In the Matter of the Application of GCI for Designation as an Eligible Telecommunications Carrier in the Study Areas Served by MTA, Inc.*, Docket No. U-06-41, (Reg. Comm. Alaska June 9, 2006).

<sup>12</sup> See Letter from Russell D. Lukas and Thomas Gutierrez to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-114, at 4 (Aug. 4, 2006) ("Denali/Alaska DigiTel Aug. 4, 2006 Letter"); see also GCI/Alaska DigiTel Joint Response to September 6, 2006 Submissions of MTA Wireless and ACS Wireless, WT Docket No. 06-114, at 24 (Sept. 14, 2006).

<sup>13</sup> See LOI at 2.

services to Sprint.<sup>14</sup> Apparently, GCI and Dobson have explored

GCI's motivation and intent are clear, even if the parties are still in negotiations.

GCI is definitely looking for opportunities to leverage its market power in the transport market to win Lower 48 carriers' roaming business. GCI will be even better positioned to tie its transport services to roaming services after the Transaction, because GCI will have strategic control over DigiTel's operations and business plan.

*The LOI Underscores the Need to Broaden the Commission's Document Production Request.*

GCI's fumbling over production of the LOI reinforces the need to broaden the Commission's general information request from GCI and DigiTel to include all agreements between the two companies.<sup>15</sup> As its explanation for a three-month late document production, GCI acknowledged that it had to disclose the LOI because it "mentioned" the earlier-filed GCI/Dobson Distribution Agreement, even though the LOI did not "in its own right" fit within the narrow description of documents the Commission requested on June 9, 2006.<sup>16</sup> In fact, the LOI did far more than that. It set forth specific cooperative arrangements to facilitate and enhance the Distribution Agreement, similar to other cooperative arrangements at Article 1, Section 10 and all of Article II.

The Commission's general information request to GCI and DigiTel was very narrow and may not elicit all GCI/DigiTel agreements that are relevant to issues in this case. The Commission asked only for contracts entered into between GCI, DigiTel and Denali regarding the 78% interest GCI seeks to acquire in DigiTel and Denali.<sup>17</sup> GCI and DigiTel could have other agreements, for example, covering strategic use of each other's services, roaming, or bundling, that could be construed to be beyond the scope of the request, but are definitely relevant and material to the Commission's public interest analysis. The Commission will avoid another lapse by the Applicants if it makes sure that GCI and DigiTel produce all agreements relevant to competitive risks of the Transaction.

---

<sup>14</sup> See GCI 2005 10-K at 20.

<sup>15</sup> See ACSW's Request that the Commission Ask for a Limited, Supplemental Production of Documents for Purposes of its Public Interest and Competitive Effects Analyses, WT Docket No. 06-114 (Sept. 6, 2006).

<sup>16</sup> See LOI Cover Letter at 1.

<sup>17</sup> See "General Information Request," attachment to Letter from James Schlichting, Deputy Chief, Wireless Telecommunications Bureau, FCC, to Thomas Gutierrez and Carl Northrop, WT Docket No. 06-114 (Jun. 9, 2006).

*GCI Continues to Try to Obscure the True Nature of its Collaboration with Dobson.*

Similar to its strategy on the Distribution Agreement which the Applicants grossly mischaracterized as a standard reseller agreement, GCI now attempts to downplay the LOI. GCI says that since the parties have not made progress in their negotiations, they do not have an out-of-the-ordinary cooperative relationship and are not engaged in “coordinated interaction.”<sup>18</sup> However, GCI fails to present any verified support for statements that GCI/Dobson have not reached agreement on any topics covered by the LOI.

GCI’s efforts to obscure the true nature of its relationship with Dobson are unavailing. The LOI demonstrates that GCI and Dobson are negotiating to develop

. Clearly, GCI is far more than a mere reseller in this arrangement. Also, even if the parties have not *yet* reached agreement on further cooperative arrangements, the underlying Distribution Agreement is in effect until . Over this time, GCI and Dobson will likely continue to discuss these cooperative arrangements, and others, because the collaboration advances their joint business objectives and the terms of the Distribution Agreement.

Further, GCI’s reasons for filing the LOI late are unclear. It stated that it filed the LOI now “out of an abundance of caution” and “in the interest of full disclosure.”<sup>19</sup> Yet, the Cover Letter fails to explain why GCI filed the document more than three months after the Commission’s information request.

The Applicants have repeatedly accused ACSW of delay in this case, in an effort to rush the FCC to a decision without a comprehensive review of the issues. In the end, the Applicants’ strategy has not advanced the decision-making process, but rather has been geared to keep the Commission in the dark as much as possible concerning the competitive effects of the Transaction.

*GCI Should Formally Commit To Terminate all Activities under the LOI if Negotiations are Over.*

GCI maintains that it did not reach agreement with Dobson on any of the LOI projects, and implies that negotiations are at an end. Generally, it claims that its interests are not aligned competitively with Dobson, and that the parties are “arms-length” competitors.<sup>20</sup> In order to prevent anticompetitive conduct by GCI after the Transaction, it is absolutely necessary for GCI and Dobson to act as genuine competitors. To ensure this, GCI should formally commit that it will not undertake any of the activities described

---

<sup>18</sup> LOI Cover Letter at 2.

<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Id.* at 2.

Marlene H. Dortch, Secretary

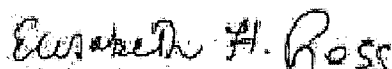
September 28, 2006

Page 7 of 7

REDACTED – FOR PUBLIC INSPECTION

in the LOI with Dobson.<sup>21</sup> After all, GCI concedes that the activities described in the LOI, if carried out, would show that the companies were not acting independently.<sup>22</sup> This is certainly true given the expansive nature of the LOI and the Distribution Agreement. The Commission should hold GCI to its word, and require GCI formally to end negotiations under the LOI.

Sincerely,



Elisabeth H. Ross  
Birch, Horton, Bittner & Cherot, P.C.  
1155 Connecticut Avenue, N.W.  
Suite 1200  
Washington, D.C. 20036  
Phone: (202) 659-5800  
Fax: (202) 659-1027  
**Counsel for ACS Wireless, Inc.**

cc: Erin McGrath, Wireless Telecommunications Bureau, Federal Communications Commission  
Susan Singer, Wireless Telecommunications Bureau, Federal Communications Commission  
Stefan M. Lopatkiewicz, Counsel for MTA Communications, Inc., d/b/a MTA Wireless  
Thomas Gutierrez, Counsel for Denali PCS, L.L.C. and Alaska DigiTel, L.L.C.  
Russell Lukas, Counsel for Denali PCS, L.L.C. and Alaska DigiTel, L.L.C.  
Carl W. Northrop, Counsel for General Communication, Inc.  
Michael Lazarus, Counsel for General Communication, Inc.

G:\505553\483\BAW0525.DOC

<sup>21</sup> The Commission has previously relied on similar voluntary commitments to prevent harm. See, e.g., *In the Matter of Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, 19 FCC Rcd. 21,522, 21,597-98, ¶ 197 (2004) (“AT&T-Cingular Order”); *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd. 18,290, 18,392, ¶ 213 & Appendix F (2005) (“AT&T-SBC Order”).

<sup>22</sup> See LOI Cover Letter at 2 (stating “[t]he failure to date of GCI and Dobson to reach mutual agreement on any of the areas mentioned in the LOI after more than two years verifies the fact that the two companies are acting independently and on an arms length basis”).

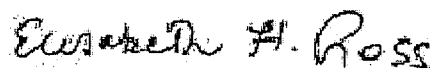
CERTIFICATE OF SERVICE

I, Elisabeth H. Ross, a shareholder at the law firm of Birch, Horton, Bittner and Cherot, P.C., hereby certify that a redacted copy of ACSW's Comments was served electronically and by first-class mail this 28th day of September, 2006:

Stefan M. Lopatkiewicz  
Dorsey & Whitney LLP  
Washington Square  
1050 Connecticut Avenue, N.W., Suite 1250  
Washington, D.C. 20036  
lopatkiewicz.stefan@dorsey.com  
*Counsel for MTA Communications, Inc., d/b/a MTA Wireless*

Thomas Gutierrez  
Russell Lukas  
Lukas, Nace, Gutierrez & Sachs, Chartered  
1650 Tysons Boulevard  
Suite 1500  
McLean, Virginia 22102  
tgutierrez@fcclaw.com  
RLukas@fcclaw.com  
*Counsel for Denali PSC, L.L.C. and  
Counsel for Alaska DigiTel, L.L.C.*

Carl W. Northrop  
Michael Lazarus  
Paul, Hastings, Janofsky, & Walker, LLP  
875 15<sup>th</sup> Street, N.W.  
Washington, D.C. 20005  
carlnorthrop@paulhastings.com  
michaellazarus@paulhastings.com  
*Counsel for General Communication, Inc.*



---

Elisabeth H. Ross